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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 **Darren MacDonald**, individually on behalf  
of all others similarly situated,

11 Plaintiff,

12 v.

13 **Christine Hotchkin**, individual

14 Defendant.

Case No. 2:20-cv-00138-SMB

**Proposed Protective Order**

15  
16 The Court recognizes that documents and information (“**Materials**” as defined  
17 herein) being sought through discovery in the above-captioned action are considered  
18 confidential by the parties. The parties have agreed to be bound by the terms of this  
19 Protective Order (“**Order**”) in this action to facilitate document production and disclosure,  
20 and to protect the respective interests of the parties in their confidential information. This  
21 Order shall remain in effect unless modified pursuant to the terms contained in this Order.

22 Accordingly,

23 **IT IS ORDERED** that the parties’ stipulation (Doc. \_\_) is granted and the following  
24 provisions shall be enforced.

25 The following Definitions shall apply in this Order:

26 A. The term “**Confidential Information**” will mean and include information  
27 contained or disclosed in any materials, including documents, portions of documents,  
28 answers to interrogatories, responses to requests for admissions, trial testimony, deposition

1 testimony, and transcripts of trial testimony and depositions, including data, summaries,  
 2 and compilations derived therefrom that is deemed to be Confidential Information by any  
 3 party to which it belongs.

4 B. The term “**Materials**” will include, but is not be limited to: documents;  
 5 correspondence; memoranda; financial information; email; specifications; marketing  
 6 plans; marketing budgets; customer information; materials that identify customers or  
 7 potential customers; price lists or schedules or other matter identifying pricing; minutes;  
 8 letters; statements; cancelled checks; contracts; invoices; drafts; books of account;  
 9 worksheets; forecasts; notes of conversations; desk diaries; appointment books; expense  
 10 accounts; recordings; photographs; motion pictures; sketches; drawings; notes of  
 11 discussions with third parties; other notes; business reports; instructions; disclosures; other  
 12 writings; records of website development; and internet archives.

13 C. The term “**Counsel**” will mean all counsel of record throughout the litigation,  
 14 including outside counsel of record, and other attorneys, paralegals, secretaries, and  
 15 support staff employed in the office of any counsel of record.

16  
 17 The following provisions shall apply in this litigation:

18 1. Each party to this litigation that produces or discloses any Materials, answers  
 19 to interrogatories, responses to requests for admission, trial testimony, deposition  
 20 testimony, and transcripts of trial testimony and depositions, or information that the  
 21 producing party believes should be subject to this Protective Order may designate the same  
 22 as “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.”

23 (a) Designation as “CONFIDENTIAL”: Any party may designate  
 24 information as “CONFIDENTIAL” only if, in the good faith belief of  
 25 such party and its Counsel, the unrestricted disclosure of such  
 26 information could be harmful to the business or operations of such  
 27 party.  
 28

1 (b) Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any  
2 party may designate information as “CONFIDENTIAL – FOR  
3 COUNSEL ONLY” only if, in the good faith belief of such party and  
4 its Counsel, the information is among that considered to be most  
5 sensitive by the party, including but not limited to trade secret or other  
6 confidential research, development, financial, customer related data  
7 or other commercial information.

8 2. In the event the producing party elects to produce Materials for inspection,  
9 no marking need be made by the producing party in advance of the initial inspection. For  
10 purposes of the initial inspection, all Materials produced will be considered as  
11 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to  
12 the terms of this Order. Thereafter, upon selection of specified Materials for copying by  
13 the inspecting party, the producing party must, within a reasonable time prior to producing  
14 those Materials to the inspecting party, mark the copies of those Materials that contain  
15 Confidential Information with the appropriate confidentiality marking.

16 3. Whenever a deposition taken on behalf of any party involves the disclosure  
17 of Confidential Information of any party:

18 (a) the deposition or portions of the deposition must be designated as  
19 containing Confidential Information subject to the provisions of this  
20 Order; such designation must be made on the record whenever  
21 possible, but a party may designate portions of depositions as  
22 containing Confidential Information after transcription of the  
23 proceedings; a party will have until thirty (30) days after receipt of the  
24 deposition transcript to inform the other party or parties to the action  
25 of the portions of the transcript to be designated “CONFIDENTIAL”  
26 or “CONFIDENTIAL – FOR COUNSEL ONLY.”

27 (b) the disclosing party will have the right to exclude from attendance at  
28 the deposition, during such time as the Confidential Information is to

1 be disclosed, any person other than the deponent, Counsel (including  
2 their staff and associates), the court reporter, and the person(s) agreed  
3 upon pursuant to paragraph 8, below; and

- 4 (c) The originals of the deposition transcripts and all copies of the  
5 deposition must bear the legend “CONFIDENTIAL” or  
6 “CONFIDENTIAL – FOR COUNSEL ONLY,” as appropriate, and  
7 the original or any copy ultimately presented to a court for filing must  
8 not be filed unless it can be accomplished under seal, identified as  
9 being subject to this Order, and protected from being opened except  
10 by order of this Court.

11 4. All Confidential Information designated as “CONFIDENTIAL” or  
12 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving  
13 party to anyone other than those persons designated within this Order and must be handled  
14 in the manner set forth below, and in any event, must not be used for any purpose other  
15 than in connection with this litigation, unless and until such designation is removed either  
16 by agreement of the parties, or by order of the Court.

17 5. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” may  
18 be viewed only by:

- 19 (a) Counsel (as defined in paragraph C, above) of the receiving party;  
20 (b) Independent experts and stenographic and clerical employees  
21 associated with such experts. Prior to receiving any Confidential  
22 Information of the producing party, the expert must execute a copy of  
23 the “Agreement to Be Bound by Stipulated Protective Order,”  
24 attached hereto as Exhibit A. Counsel for the receiving party must  
25 retain executed copies of such exhibits;  
26 (c) The Court and any Court staff and administrative personnel;  
27 (d) Any court reporter employed in this litigation and acting in that  
28 capacity; and

1 (e) Any person indicated on the face of the document to be its author or  
2 co-author, or any person identified on the face of the document as one  
3 to whom a copy of such document was sent before its production in  
4 this action.

5 6. Information designated “CONFIDENTIAL” may be viewed only by the  
6 individuals listed in paragraph 5, above, and by the additional individuals listed below:

7 (a) Party principals or executives who are required to participate in policy  
8 decisions with reference to this action;

9 (b) Technical personnel of the parties with whom Counsel for the parties  
10 find it necessary to consult, in the discretion of such Counsel, in  
11 preparation for trial of this action; and

12 (c) Stenographic and clerical employees associated with the individuals  
13 identified above.

14 7. All information that has been designated as “CONFIDENTIAL – FOR  
15 COUNSEL ONLY” by the producing or disclosing party, and any and all reproductions of  
16 that information, must be retained in the custody of the Counsel for the receiving party,  
17 except that independent experts authorized to view such information under the terms of  
18 this Order may retain custody of copies such as are necessary for their participation in this  
19 litigation, but only during the course of this litigation. The principals, employees or other  
20 agents of the parties who received information prior to and apart from this litigation that  
21 was subsequently disclosed in this litigation as being either “CONFIDENTIAL” or  
22 “CONFIDENTIAL – FOR COUNSEL ONLY” may also retain copies of that information  
23 as is necessary for use in their respective businesses.

24 8. Before any Materials produced in discovery, answers to interrogatories,  
25 responses to requests for admissions, deposition transcripts, or other documents which are  
26 designated as Confidential Information are filed with the Court for any purpose, the party  
27 seeking to file such material must seek permission of the Court to file the material under  
28 seal. The parties must follow the procedural requirements of LRCiv 5.6. Nothing in this

1 order shall be construed as automatically permitting a party to file under seal. The party  
2 seeking leave of Court shall show “compelling reasons” (where the motion is more than  
3 tangentially related to the merits of the case) or “good cause” for filing under seal. *See Ctr.*  
4 *for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). Additionally,  
5 such party seeking to file under seal shall, within the applicable deadline, file a redacted,  
6 unsealed version of any motion, response or reply if such party is waiting for a ruling from  
7 the Court on filing an unredacted, sealed version of the same document. Further, no portion  
8 of the trial of the matter shall be conducted under seal.

9         9. Confidential Information and Materials designated “CONFIDENTIAL” or  
10 “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the prosecution or  
11 defense of this action. A party who wishes to use Confidential Information and/or  
12 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL  
13 ONLY” for a purpose other than the prosecution or defense of this action must request  
14 permission, in writing, from Counsel for the producing party. The receiving party’s request  
15 must identify the Confidential Information and/or Materials designated  
16 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” that the receiving  
17 party wishes to use, and identify the purpose for which it wishes to use Confidential  
18 Information and/or Materials designated “CONFIDENTIAL” or “CONFIDENTIAL –  
19 FOR COUNSEL ONLY.” If the parties cannot resolve the question of whether the  
20 receiving party can use Confidential Information and/or Materials designated  
21 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other  
22 than the prosecution or defense of this action within fourteen (14) days of the producing  
23 party’s receipt of such a request, the receiving party may move the Court for a ruling on  
24 the receiving party’s request. In the event any party files a motion seeking to use  
25 Confidential Information and/or Materials designated “CONFIDENTIAL” or  
26 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the prosecution or  
27 defense of this action, the Confidential Information and/or Materials designated  
28 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” shall be submitted

1 to the Court, under seal, for an in-camera inspection. Any Confidential Information and/or  
2 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL  
3 ONLY” at issue must be treated as Confidential Information, as designated by the  
4 producing party, until the Court has ruled on the motion or the matter has been otherwise  
5 resolved.

6 10. At any stage of these proceedings, any party may object to a designation of  
7 Materials as Confidential Information. The party objecting to confidentiality must notify,  
8 in writing, Counsel for the producing party of the objected-to Materials and the grounds  
9 for the objection. If the dispute is not resolved consensually between the parties within  
10 fourteen (14) days of receipt of such a notice of objections, the objecting party may move  
11 the Court for a ruling on the objection. In the event any party files a motion challenging  
12 the designation or redaction of information, the document shall be submitted to the Court,  
13 under seal, for an in-camera inspection. The Materials at issue must be treated as  
14 Confidential Information, as designated by the producing party, until the Court has ruled  
15 on the objection or the matter has been otherwise resolved.

16 11. At any stage of these proceedings, any party may request that it be permitted  
17 to disclose Materials designated as Confidential Information to individuals not permitted  
18 by this Order to view such Materials. The party must notify, in writing, Counsel for the  
19 producing party of the identity of the relevant Materials and the individuals to whom the  
20 party wishes to disclose the Materials. If the request is not resolved consensually between  
21 the parties within fourteen (14) days of receipt of such a request, the requesting party may  
22 move the Court for a ruling allowing such disclosure. In the event any party files a motion  
23 requesting such disclosure, the document shall be submitted to the Court, under seal, for  
24 an in-camera inspection. The Materials at issue must be treated as Confidential  
25 Information, as designated by the producing party, until the Court has ruled on the request.

26 12. All Confidential Information must be held in confidence by those inspecting  
27 or receiving it. To the extent the Confidential Information has not been disclosed prior to  
28 and apart from this litigation, it must be used only for purposes of this action. If the

1 Confidential Information was exchanged between the parties prior to and apart from this  
2 litigation for purposes of conducting their respective businesses, the parties may continue  
3 to use that otherwise Confidential Information for that purpose. The parties may not  
4 distribute the Confidential Information beyond those persons or entities that had received  
5 the Confidential Information prior to this litigation. In addition, counsel for each party,  
6 and each person receiving Confidential Information, must take reasonable precautions to  
7 prevent the unauthorized or inadvertent disclosure of such information. If Confidential  
8 Information is disclosed to any person other than a person authorized by this Order, the  
9 party responsible for the unauthorized disclosure must immediately bring all pertinent facts  
10 relating to the unauthorized disclosure to the attention of the other parties and, without  
11 prejudice to any rights and remedies of the other parties, make every effort to prevent  
12 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

13 13. No party will be responsible to another party for disclosure of Confidential  
14 Information under this Order if the information in question is not labeled or otherwise  
15 identified as such in accordance with this Order.

16 14. If a party, through inadvertence, produces any Confidential Information  
17 without labeling or marking or otherwise designating it as such in accordance with this  
18 Order, the producing party may give written notice to the receiving party that the Materials  
19 produced are deemed Confidential Information, and that the Materials produced should be  
20 treated as such in accordance with that designation under this Order. The receiving party  
21 must treat the Materials as confidential, once the producing party so notifies the receiving  
22 party. If the receiving party has disclosed the Materials before receiving the designation,  
23 the receiving party must notify the producing party in writing of each such disclosure.  
24 Counsel for the parties will agree on a mutually acceptable manner of labeling or marking  
25 the inadvertently produced Materials as “CONFIDENTIAL” or “CONFIDENTIAL – FOR  
26 COUNSEL ONLY” – SUBJECT TO PROTECTIVE ORDER.



1           15. Nothing within this Order will prejudice the right of any party to object to  
2 the production of any discovery material on the grounds that the material is protected as  
3 privileged or as attorney work product.

4           16. Nothing in this Order will bar Counsel from rendering advice to their clients  
5 with respect to this litigation and, in the course thereof, relying upon any information  
6 designated as Confidential Information, provided that the contents of the information must  
7 not be disclosed.

8           17. This Order will be without prejudice to the right of any party to oppose  
9 production of any information for lack of relevance or any other ground other than the mere  
10 presence of Confidential Information. The existence of this Order must not be used by  
11 either party as a basis for discovery that is otherwise improper under the Federal Rules of  
12 Civil Procedure.

13           18. Information designated Confidential pursuant to this Order also may be  
14 disclosed if: (a) the party or non-party making the designation consents to such disclosure;  
15 (b) the Court, after notice to all affected persons, allows such disclosure; or (c) the party to  
16 whom Confidential Information has been produced thereafter becomes obligated to  
17 disclose the information in response to a lawful subpoena, provided that the subpoenaed  
18 party gives prompt notice to Counsel for the party which made the designation, and permits  
19 Counsel for that party sufficient time to intervene and seek judicial protection from the  
20 enforcement of this subpoena and/or entry of an appropriate protective order in the action  
21 in which the subpoena was issued.

22           19. Nothing in this Confidentiality Order shall limit any producing party's use  
23 of its own documents or shall prevent any producing party from disclosing its own  
24 Confidential Information to any person. Such disclosures shall not affect any confidential  
25 designation made pursuant to the terms of this Order so long as the disclosure is made in a  
26 manner which is reasonably calculated to maintain the confidentiality of the information.  
27 Nothing in this Order shall prevent or otherwise restrict Counsel from rendering advice to  
28

1 their clients, and in the course thereof, relying on examination of stamped confidential  
2 information.

3 20. Within thirty (30) days of the final termination of this action, including any  
4 and all appeals, Counsel for each party must purge all Confidential Information from all  
5 machine-readable media on which it resides and must either (a) return all Confidential  
6 Information to the party that produced the information, including any copies, excerpts, and  
7 summaries of that information, or (b) destroy same. With respect to paper copies, return  
8 or destruction of Confidential Information is at the option of the producing party.  
9 Notwithstanding the foregoing, Counsel for each party may retain all pleadings, briefs,  
10 memoranda, motions, and other documents filed with the Court that refer to or incorporate  
11 Confidential Information, and will continue to be bound by this Order with respect to all  
12 such retained information, after the conclusion of this litigation. Further, attorney work  
13 product Materials that contain Confidential Information need not be destroyed, but, if they  
14 are not destroyed, the person in possession of the attorney work product will continue to  
15 be bound by this Order with respect to all such retained information, after the conclusion  
16 of this litigation.

17 21. The restrictions and obligations set forth within this Order will not apply to  
18 any information that: (a) the parties agree should not be designated Confidential  
19 Information; (b) the parties agree, or the Court rules, is already public knowledge; or (c)  
20 the parties agree, or the Court rules, has become public knowledge other than as a result of  
21 disclosure by the receiving party, its employees, or its agents, in violation of this Order.

22 22. Any party may designate as “CONFIDENTIAL” or “CONFIDENTIAL –  
23 FOR COUNSEL ONLY” any Materials that were produced during the course of this action  
24 without such designation before the effective date of this Order, as follows:

- 25 (a) Parties to this action may designate such Materials by sending written  
26 notice of such designation, accompanied by copies of the designated  
27 Materials bearing the appropriate legend of “CONFIDENTIAL” or  
28 “CONFIDENTIAL – FOR COUNSEL ONLY” to all other parties in

1 possession or custody of such previously undesignated Materials.  
2 Any party receiving such notice and copies of designated Materials  
3 pursuant to this subparagraph shall return to the producing party all  
4 undesignated copies of such Materials in its custody or possession, or  
5 shall affix the appropriate legend to all copies of the designated  
6 Materials in its custody or possession.

7 (b) Upon notice of designation pursuant to this paragraph, parties shall  
8 also: (i) make no disclosure of such designated Materials or  
9 information contained therein except as allowed under this Order; and  
10 (ii) take reasonable steps to notify any persons known to have  
11 possession of such designated Materials or information of the effect  
12 of such designation under this Order.

13 (c) All such designations must be made within thirty (30) days of the date  
14 of this Order.

15 23. Transmission by e-mail or facsimile is acceptable for all notification  
16 purposes within this Order.

17 24. This Order may be modified by agreement of the parties, subject to approval  
18 by the Court.

19 25. The Court may modify the terms and conditions of this Order for good cause,  
20 or in the interest of justice, or on its own order at any time in these proceedings.

21 26. After termination of this action, the provisions of this Order shall continue to  
22 be binding, except with respect to those documents and information that became a matter  
23 of public record. This Court retains and shall have continuing jurisdiction over the parties  
24 and recipients of Confidential Information and Materials designated as confidential for  
25 enforcement of the provisions of this Order following termination of this litigation.

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

|  |  |
|--|--|
| Plaintiff,<br><br>v.<br><br>Defendant. | No.<br><br><b>AGREEMENT TO BE BOUND BY<br/>STIPULATED PROTECTIVE<br/>ORDER</b> |
|--|--|

I, \_\_\_\_\_, declare and say that:

1. I am employed as \_\_\_\_\_  
by \_\_\_\_\_.
2. I have read the Stipulated Protective Order (the “Order”) entered in  
\_\_\_\_\_ and have received a copy of the Order.
3. I promise that I will use any and all “Confidential” or “Confidential –  
For Counsel Only” information, as defined in the Order, given to me only in a manner  
authorized by the Order, and only to assist Counsel in the litigation of this matter.
4. I promise that I will not disclose or discuss such “Confidential” or  
“Confidential – For Counsel Only” information with anyone other than the persons  
described in paragraphs 3, 8 and 9 of the Order.
5. I acknowledge that, by signing this agreement, I am subjecting myself  
to the jurisdiction of the United States District Court for the District of Arizona with  
respect to the enforcement of the Order.

1           6. I understand that any disclosure or use of “Confidential” or  
2 “Confidential – For Counsel Only” information in any manner contrary to the  
3 provisions of the Protective Order may subject me to sanctions for contempt of court.

4           7. I will return all “Confidential” or “Confidential – For Counsel Only”  
5 Materials (as defined in the Order) to the attorney who provided it to me, upon request of  
6 that attorney, and I shall not retain any copies of said Materials or any information  
7 contained within “Confidential” or “Confidential – For Counsel Only” Materials.

8           I declare under penalty of perjury that the foregoing is true and correct.

9  
10  
11 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature